

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES HERRING,

Plaintiff,

Case No. 05-CV-73556

vs.

HON. GEORGE CARAM STEEH

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

_____/

ORDER DENYING PLAINTIFF'S MOTION FOR AMENDMENT
AND CERTIFICATION FOR INTERLOCUTORY APPEAL [DOCUMENT 7]

On November 16, 2005 this court entered an opinion and order denying plaintiff's motion to remand. Plaintiff filed this motion for amendment and certification for interlocutory appeal on November 23, 2005. For the reasons that follow, the court denies plaintiff's motion.

Plaintiff is seeking no-fault first party benefits under the Michigan No-Fault Act from defendant, his no-fault insurer. This court denied plaintiff's motion to remand, following the holding by the Sixth Circuit in Lee-Lipstreu v. Chubb Group of Insurance Co., 329 F.3d 898 (6th Cir. 2003). In that case, the Sixth Circuit held that the direct action provision does not apply to a dispute solely between an insured and her own insurance company to recover underinsured motorist benefits. Id. at 900. Plaintiff argues that this court's decision conflicts with the Sixth Circuit's earlier decision in Ford Motor Co. v. Insurance Co. of North America, 669 F.2d 421 (6th Cir. 1982), in which the Court found there to be a direct action in the context of a no-fault first party case.

While it might be desirable for the Sixth Circuit to revisit the issue as it relates to federal diversity jurisdiction over first party no-fault cases, the Sixth Circuit's decision in Lee-Lipstreu is clear enough that certification for immediate appeal is not necessary. Plaintiff's motion for amendment and certification for interlocutory appeal is therefore DENIED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: January 24, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on January 24, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk